

Independent Claims 1, 13, 20 and 24 require “at least 2% by weight of insoluble fiber”. The Specification clearly supports this language. First, the Specification supports the limitation that the dried pet food of Claims 1, 13, 20 and 24 can include about 2% by weight of insoluble fiber. For example, the Specification discloses that “[t]he pet food preferably contains about 2% to about 15% by weight of insoluble fiber” on page 3 at lines 9-10. Further, the Specification discloses that “the dried pet food conveniently contains about 2% to about 15% by weight of insoluble fiber” on page 4 at lines 31-32.

It appears that the Examiner is not objecting to the limitation “at least 2%”, but the fact that there is no upper limit as to the amount of insoluble fiber. If this is the case, such a rejection is clearly improper. The Specification clearly supports that the dried pet food of Claims 1, 13, 20 and 24 can include greater than 2% by weight of insoluble fiber. This feature is clearly supported in the Specification, for example, on page 2 at lines 31-34 as follows:

in one aspect, this invention provides a dried pet food comprising a matrix including a denatured protein source, a gelatinized carbohydrate source; **insoluble fiber**; and a humectant in an amount sufficient for reducing brittleness of the matrix. (Emphasis Added).

Moreover, as originally filed, independent Claims 1, 13 and 20 required a dried pet food that included a matrix having an insoluble fiber with no upper limit. Thus, the claims as filed supported the use of any amount of insoluble fiber. Applicants do not understand the rejection that is being asserted.

Of course, it is axiomatic that:

[I]psis verbis disclosure is not necessary to satisfy the written description requirement under of section 112. Instead, the disclosure need only reasonably convey to persons skilled in the art that the inventor had possession of the subject matter in question.

Fujikawa v. Wattanasin, 39 USPQ.2d 1895, 1904 (Fed. Cir. 1996).

The Specification as filed disclosed to one skilled in the art and conveyed to the public that Applicants had possession of an invention including “at least 2% by weight of insoluble fiber”. Accordingly, Applicants respectfully request that the rejection of Claims 1, 13, 20 and 24 under 35 U.S.C. § 112 be withdrawn.

In the Office Action, Claims 1-24 are rejected under 35 U.S.C. § 102. More specifically, Claims 1-3, 6-7, 13-15 and 18-24 are rejected under 35 U.S.C. § 102 as being anticipated by *Gelman et al.*; Claims 1-20 and 24 are rejected under 35 U.S.C. § 102 as being anticipated by *Simone et al.*; and Claim 24 is rejected under 35 U.S.C. § 102 as being anticipated by *Hand et al.*

At the outset, Applicants submit that the rejections of Claims 1-24 under 35 U.S.C. § 102 are improper based on the fact that the Patent Office has failed to establish a *prima facie* case of anticipation. The Federal Circuit has held that:

For a prior art reference to anticipate a claim, the reference must disclose each and every element of the claim with sufficient clarity to prove its existence in the prior art. *See In re Spada*, 911 F.2d 705, 708, 15 USPQ 2d 1655, 1657 (Fed. Cir. 1990) (“[T]he [prior art] reference must describe the applicant’s claimed invention sufficiently to have placed a person of ordinary skill in the field of the invention in possession of it.” (citations omitted)). Although this disclosure requirement presupposes the knowledge of one skilled in the art of the claimed invention, that presumed knowledge does not grant a license to read into the prior art reference teachings that are not there.

Motorola, Inc. v. Interdigital Technology Corp., 43 USPQ2d 1481, 1490 (Fed. Cir. 1997).

“In addition, the prior art reference must be enabling, thus placing the allegedly disclosed matter in the possession of the public.” *Akzo N.V. v. U.S. International Trade Commission*, 1 USPQ2d 1241, 1245 (Fed. Cir. 1986).

With respect to the anticipation rejection of Claims 1-3, 6-7, 13-15 and 18-24 in view of *Gelman et al.*, the Patent Office mistakenly interprets this teaching to necessarily include an

insoluble fiber source as required by Claims 1-3, 6-7, 13-15 and 18-24, let alone at least 2% by weight of an insoluble fiber source as required by the claims. Although *Gelman et al.* discloses flour and other farinaceous material, clearly, *Gelman* is not concerned with whether or not the fiber that is provided is soluble or insoluble. In this regard, *Gelman* merely uses starchy substances to aid in the cost reduction of the product. (*Gelman et al.*, column 10, lines 10-14).

Based on the fact that *Gelman et al.* fails to teach or suggest a pet food product that includes an insoluble fiber source, let alone at least 2% by weight of an insoluble fiber source, Applicants submit that *Gelman et al.* fails to anticipate Claims 1-3, 6-7, 13-15 and 18-24 under 35 U.S.C. § 102. Accordingly, Applicants respectfully request that this rejection be withdrawn.

With respect to the rejection of Claims 1-20 and 24 under 35 U.S.C. § 102, the Patent Office essentially asserts that *Simone* teaches a dried pet food product, particularly one that includes a moisture content of about 10% by weight. First, Applicants submit that this is not a fair reading of *Simone*.

Regardless, in contrast to *Simone*, independent Claims 1, 8, 13, 20 and 24 require a dried pet food that includes, in part, a moisture content of less than 10% by weight. *Simone* fails to disclose a moisture level below 10% by weight. Indeed, *Simone* specifically claims that the moisture level is equal to or greater than 12% by weight (*Simone*, see Claim 1 and 17). As defined in the Specification in column 5 at lines 5-10, *Simone* discloses that the moisture level is preferably 16% to 35% by weight.

Although *Simone* discloses that the expanded cellular product as it leaves the extruder has a moisture content of about 10% to about 35% (*Simone et al.*, column 7, lines 17-21), this teaching applies to an intermediary product and not a final product as incorrectly stated by the Patent Office.

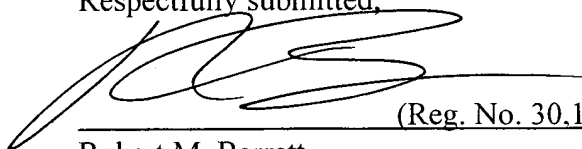
Simone further discloses that the expanded and extruded cellular product is “subdivided into longitudinal one to five inch sections and allowed to cool and dry to a moisture content of about 12% to about 35% by weight water” and not less than 10%. (*Simone*, column 7, lines 22-28.)

Based on the fact that *Simone* fails to teach or suggest each and every feature, such as the moisture content feature, of independent Claims 1, 8, 13, 20 and 24, Applicants submit that *Simone* fails to anticipate independent Claims 1-20 and 24. Accordingly, Applicants respectfully request that the rejection of Claims 1-20 and 24 under 35 U.S.C. § 102 be withdrawn.

Applicants note for the record that the rejection of Claim 24 under 35 U.S.C. § 102 in view of *Hand* was not explicitly addressed in the Final Office Action dated January 2, 2001. To the extent that this rejection still applies, Applicants submit that it is improper and should be withdrawn. Clearly, *Hand* does not disclose or suggest the use of a humectant. In contrast, Claim 24 was previously amended to specifically include a humectant in the kibble used in the claimed method.

For the foregoing reasons, Applicants respectfully request reconsideration of their patent application and earnestly solicit an early allowance of the same.

Respectfully submitted,



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